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UNCLAS VIENNA 000301

SIPDIS

CA/OCS/CI FOR ECONWAY AND GDEBOER; EUR/AGS FOR VVIKMANIS-KELLER

E.O. 12958: N/A

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SUBJECT: SYLVESTER HAGUE CASE: ACTION REQUEST COMPLETED

REF: A) VIENNA 92 B) STATE 2469

¶11. SUMMARY: REF B was an action request instructing post to meet with the Austrian Central Authority (ACA), contact the Austrian attorney representing Tom Sylvester, and attend the March 15, 2006 hearing on his Article 21 Hague Access Case. REF A reported on our meeting with the ACA on January 11, 2006. This telegram provides the gist of our discussions with the Austrian attorney, including a telephone call and a personal visit in conjunction with a prison visit to the same area. END SUMMARY.

¶12. Conoff and Legal Assistant met with Austrian attorney Martina Weirer at her office in Graz on January 24 for almost two hours and referred to the talking points provided in Ref B. The tone was cordial and Weirer seemed eager to talk. Weirer confirmed what the ACA had earlier told us (ref A), that the court did not/not oppose informal access by Tom Sylvester to his child; that in order to avoid having to rule against Tom Sylvester because of his daughter's obstinate reluctance for contact the court had instituted a "breathing space" of some nine months in order to make his daughter feel under less pressure over visitation in the hope her attitude would soften; and that the court felt strongly that Tom Sylvester indeed ought to have visitation/access with his daughter. (Embassy comment: Thus, Ref B is somewhat in error in stating that during the last hearing in November, the judge ordered no access. This would be neither the understanding of the ACA nor of the attorney in the case).

¶13. Weirer had not been aware that Tom Sylvester had not been able to telephone his daughter since July 2005, nor that Monika Sylvester had failed to provide him with the daughter's email address, as had been agreed in court. She said she would immediately request the email address from opposing council.

¶14. According to Weirer, the most difficult issue for the court is the child's refusal to see her father. As we have heard before, in the absence of hard proof of alienation or coercion there is no legal basis under Austrian law to force access against the will of a child of this age. Weirer added that the court psychologist would talk to the child again sometime before the court date but cautioned that Austrian judges are generally reluctant to order visitation that may be difficult to enforce because of the resistance of the child.

¶15. If on March 15 the court were to rule against Tom Sylvester's application, Weirer plans to appeal to a higher court on the grounds that the daughter is indeed an 'alienated child.' She said she would also refer to the ECHR ruling in requesting that Austria meet its obligation to end the violation of their right to a family life.

¶16. Regarding consular attendance at the March hearing, Weirer said she would raise the possibility with the judge once she has her client's authorization. Weirer thought our presence at the hearing could "not hurt" but explained that Monika Sylvester's attorney had the option to oppose our attendance and she, Weirer, did not think the issue was worth fighting over.

¶17. Finally, she would not favor a motion to remove the judge because it would slow down the appeals process. The judge could not in any event be removed until she had rendered a final decision on the application, and some hard proof of bias would be required. Weirer also said that it was not unusual for a judge to follow the recommendations of the child psychologist. She did not see the judge's behavior as biased or especially difficult, and said that among the other judges this judge was particularly well-regarded.

¶18. Post will follow up with a telegram on the March 15 hearing, per ref B, regardless of whether we are able to be present or not. We will continue to work with the attorney to press for attendance.

